

In the Court of Appeals of the State of Alaska

Sarah Romines Skupa,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-13346**

Order

Motion to Review Bail Decision

Date of Notice: **4/29/2019**

Trial Court Case No. **3AN-13-06898CR**

Before: Chief Judge Allard, Harbison, Judge, and Smith,
Senior Superior Court Judge.*

This is an appeal of a superior court's order denying the defendant bail pending a sentence appeal. For the reasons explained here, we vacate the court's order and remand this issue to the superior court for reconsideration of the defendant's request in light of the guidance provided here.

Relevant facts and prior proceedings

Sarah Romines Skupa pleaded guilty to one count of first-degree theft. She was sentenced to two years' incarceration, with one year suspended, and ordered to pay \$415,554.61 plus interest in restitution. Skupa has filed an appeal raising two claims: that her sentence is excessive and that restitution should not have been determined in her criminal case.¹ The appeal is currently pending before this Court. The deadline for the

* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

¹ See *Statement of Points on Appeal*.

opening brief has been stayed, pending the preparation of supplemental transcripts. Skupa has not moved for expedited consideration of the appeal.

Prior to her remand date, Skupa asked the superior court for bail pending appeal, requesting that she remain out of custody pending the resolution of the appeal. During the course of her case in the superior court, Skupa remained out of custody on bail release, on her own recognizance, for six years without incident. In her application for bail pending appeal, Skupa proposed bail conditions that were more restrictive than her prior pretrial bail conditions.² Specifically, she proposed that she be released on private electronic monitoring, and that she be required to pay \$300 per month toward restitution. The State opposed Skupa's request for bail pending appeal.

The superior court denied Skupa's request for bail pending appeal in a written order, reasoning that her request for court-ordered private electronic monitoring was an attempt to circumvent the Department of Corrections' requirement that a defendant must serve 60 days in jail before finishing the remainder of the sentence on electronic monitoring. In its order, the superior court made no findings with regard to whether Skupa's proposed conditions of release would reasonably assure her appearance and prevent her from posing a danger to other persons and the community.

Skupa now appeals this bail ruling.

² Skupa apparently made a number of bail proposals, not all of which were documented to this Court.

Alaska law on bail pending a sentence appeal

Under AS 12.30.040(a), a trial court may grant bail pending appeal “if the person establishes, by clear and convincing evidence, that the person can be released under conditions that will reasonably assure the appearance of the person and the safety of the victim, other persons, and the community.”³ Although the statute refers to “appeal” in general terms, Alaska courts have previously interpreted the requirements of AS 12.30.040 to apply only to requests for bail pending merit appeals.⁴

As we have explained, in this case Skupa has filed a merit appeal as well as a sentence appeal, but she does not challenge her conviction in her merit appeal. Because Skupa has not appealed her conviction, but she does challenge her sentence as excessive, we will analyze her bail claim under the law that applies to bail pending sentence appeals.

In *Dobrova v. State*, this Court held that trial courts have a common-law authority to grant bail pending a sentence appeal.⁵ The Alaska Supreme Court affirmed this holding.⁶

³ See also Alaska R. App. P. 206(b).

⁴ See *Dobrova v. State*, 674 P.2d 834, 835 (Alaska App. 1984) *aff’d*, 694 P.2d 157 (Alaska 1985); *but see State v. Dobrova*, 694 P.2d 157, 159-60 (Alaska 1985) (Compton, J., concurring) (concluding that AS 12.30.040 applies to all requests for bail pending appeal, regardless of whether the appeal is a merit appeal or a sentence appeal).

⁵ *Dobrova*, 674 P.2d at 835.

⁶ *Dobrova*, 694 P.2d at 158-59.

Later decisions by this Court indicated that the requirements and restrictions that apply to a request for bail pending a merit appeal under AS 12.30.040(a) also apply to a request for bail pending a sentence appeal.⁷ But in our decision in *Dobrova*, this Court also indicated that the trial court had the discretion to consider factors outside the traditional factors of flight risk and safety of the community when deciding a request for bail pending a sentence appeal.⁸ We reasoned that:

Since a sentence appeal does not fall within AS 12.30.040, it necessarily follows that the trial court has discretion to deny bail for a sentence appeal without finding “that no one or more conditions of release will reasonably assure the appearance of the person as required or prevent the person from posing a danger to other persons and the community.” AS 12.30.040(a). Nevertheless, the trial court, in exercising its discretion, must make a reasoned decision.⁹

We did not directly explain in *Dobrova* what constitutes “a reasoned decision” in this context. But in *Shepersky v. State*, we again addressed the legal standard for bail pending a sentence appeal, and provided guidance on how this

⁷ See, e.g., *Hosier v. State*, 957 P.2d 1360, 1363-64 (Alaska App. 1998) (explaining that a trial court “abuses its discretion when it exercises its common-law power of bail release [pending sentence appeal] in a manner that creates an equal protection problem by treating sentence-appeal defendants more favorably than merit-appeal defendants”).

⁸ *Dobrova*, 674 P.2d at 835.

⁹ *Id.*

common-law authority should be exercised and what factors a trial court should consider when deciding such a request.¹⁰

In *Shepersky v. State*, we reasoned that a trial court's decision should be related to the underlying purpose of bail pending a sentence appeal — to protect a defendant from serving imprisonment that might later be struck by the appellate court.¹¹ We held that even if a defendant meets the criteria for bail release set forth in AS 12.30.040, a trial court may deny a request for bail pending a sentence appeal if the court determines that bail release is unnecessary because the sentence appeal will be resolved before the defendant has served the minimum sentence that the appellate court would likely affirm.¹² Likewise, the trial court may consider whether the defendant has requested expedited consideration of their sentence appeal in assessing the need for bail pending resolution of the sentence appeal.¹³

We remand this case for reconsideration of Skupa's request for bail pending her sentence appeal

In its order denying Skupa's request for bail, the superior court found that Skupa's request is nothing more than an attempt to avoid the requirement that she spend

¹⁰ *Shepersky v. State*, 401 P.3d 990, 992-93 (Alaska App. 2017).

¹¹ *Id.* at 993.

¹² *Id.*

¹³ *Id.*

the first 60 days of incarceration before being released on electronic monitoring.¹⁴ The superior court also explained that bail should be denied because Skupa had been charged in 2013, and six years later her case has yet to conclude.¹⁵ It expressed concern that allowing bail for “white collar criminals” like Skupa would send an improper message, given that shoplifters are regularly required to serve their sentence.¹⁶ Citing *Dobrova*, the superior court noted that “the trial court has discretion to deny bail for a sentence appeal without finding ‘that no one or more conditions of release will reasonably assure the appearance of the person as required or prevent the person from posing a danger to other persons and the community.’”¹⁷ The superior court’s written order did not acknowledge our decision in *Shepersky*, nor did it apply the legal standard we announced in that decision.

We conclude that remand for reconsideration of the request is required. On remand, the court should reconsider this issue under the correct legal standard and should provide appropriate findings in support of its decision.

¹⁴ Order Denying Defendant’s Third Revised Motion for Bail Pending Appeals and Defendant’s Third Revised Motion for Stay of Jail Sentence (Exhibit 1).

¹⁵ *Id.* at p. 2.

¹⁶ *Id.* at pp. 2-3.

¹⁷ *Id.* at p. 2 (quoting *Dobrova v. State*, 674 P.2d 834, 835 (Alaska App. 1984)).

The superior court's order also suggests that the court denied Skupa's request for bail based in part on the victim's need for finality¹⁸ and the need for community condemnation of white collar criminals.¹⁹ As we stated in *Shepersky*:

Under the Alaska Constitution, a crime victim has the right to be present and to be heard at any bail hearing where the defendant's release from custody is being considered. The court should ensure that these rights are honored and that the victim's concerns are appropriately considered, particularly those concerns related to the victim's safety. But the victim's desire for finality is an insufficient reason to deny a defendant bail release. Likewise, community condemnation, although an appropriate consideration in crafting a sentence, is an inappropriate consideration in the context of a request for bail release pending resolution of an excessive sentence claim.²⁰

On remand, the superior court should consider (1) whether Skupa has established by clear and convincing evidence that the proposed bail conditions will reasonably assure Skupa's appearance and reasonably assure the safety of the victim and the community; and (2) the extent (if any) that Skupa's legal rights will be prejudiced should she be denied bail pending appeal but ultimately prevail on her underlying claim that her sentence is excessive. As part of these considerations, the court may consider both the likelihood that Skupa's sentence appeal will be successful and Skupa's diligence

¹⁸ *Id.* at p. 2.

¹⁹ *Id.* at p. 2-3.

²⁰ *Shepersky v. State*, 401 P.3d 990, 993-94 (Alaska App. 2017).

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in seeking to expedite the resolution of her direct appeal. The court may also consider whether electronic monitoring is necessary under these circumstances.

Skupa's claim that we should disqualify the superior court judge

Skupa argues that this Court should order that a new superior court judge be assigned to her case. She devotes only a single sentence to this argument, claiming that the judge violated “his duty to render a reasoned . . . decision that comported with the law and did not rest on retribution.” But because Skupa did not raise this issue in the superior court, we do not have an adequate record to consider this issue. If Skupa believes that the assigned superior court judge should be disqualified, she may file a motion under the procedures set out in AS 22.20.020.²¹

Conclusion

We VACATE the superior court’s bail order and REMAND this case to the superior court for reconsideration of the defendant’s request for bail in accord with the guidance provided here. We do not retain jurisdiction of this bail appeal.

²¹ See *Osceola v. State*, 2013 WL 2489585 at *3 (Alaska App. June 5, 2013) (unpublished) (finding that where an appearance of bias was alleged to be shown during trial court’s sentencing remarks and pre-sentencing order, the case would be remanded for defendant to file a motion for disqualification).

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Clerk of the Appellate Courts

A handwritten signature in dark ink, appearing to read "K. Roberts", is positioned above a horizontal line.

Kyle Roberts, Deputy Clerk

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